

1 THE HONORABLE BRIAN A. TSUCHIDA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 CHRISTOPHER J. HADNAGY, an
10 individual; and SOCIAL-ENGINEER,
11 LLC, a Pennsylvania limited liability
12 company,

Plaintiffs,

v.

13 JEFF MOSS, an individual; DEF CON
14 COMMUNICATIONS, INC., a Washington
15 corporation; and DOES 1-10; and ROE
ENTITIES 1-10, inclusive,

Defendants.

No. 2:23-cv-01932-BAT

**DECLARATION OF MATTHEW
J. MERTENS IN SUPPORT OF
DEFENDANTS' MOTION TO
EXTEND DEADLINES AND
CONTINUE TRIAL**

NOTED FOR CONSIDERATION:
November 15, 2024

1 I, Matthew J. Mertens, declare and state as follows:

2 1. I am a partner at Perkins Coie LLP, and I serve as counsel for
3 Defendants Def Con Communications, Inc. (“Def Con”) and Jeff Moss (collectively,
4 “Defendants”) in the above-entitled action. I submit this declaration in support of
5 Defendants’ motion to continue deadlines in the scheduling order and continue trial.

6 2. The information contained in this declaration is true and correct to the
7 best of my knowledge, and I am of majority age and competent to testify about the
8 matters set forth herein.

9 3. On August 21, 2024, the Court granted Def Con’s motion to compel (the
10 “Order”) against Plaintiffs Christopher Hadnagy and Social-Engineer LLC
11 (collectively, “Plaintiffs”).

12 4. On August 21, 2024, following the Court’s Order, I sent Defendants’ list
13 of proposed custodians and search terms to Plaintiffs.

14 5. On August 23, 2024, counsel for Plaintiffs, Mark Conrad, sent a list of
15 seven additional custodians and search terms to Defendants.

16 6. Defendants quickly worked to process over 200,000 documents from the
17 seven additional custodians, and I began negotiations with Plaintiffs regarding
18 narrowing their overbroad search terms.

19 7. On September 5, 2024, Mr. Conrad confirmed that Plaintiffs had hired
20 a third-party vendor to handle the forensic collection pursuant to the Court’s Order
21 and would run the search terms I provided on August 21, 2024.

22 8. On September 6, 2024, I met and conferred with Mr. Conrad and
23 negotiated parameters to narrow the scope of Plaintiffs’ search terms.

24 9. On September 9, 2024, I asked Mr. Conrad for an update on the search
25 term report for Defendants’ proposed search terms.

1 10. On September 13, 2024, Mr. Conrad provided for the first time a search
2 term report for Defendants' search terms, three weeks after I provided the proposed
3 search terms on August 21, 2024. Mr. Conrad informed me that the search terms
4 were too broad.

5 11. On September 17, 2024, I sent Mr. Conrad revisions to the search terms
6 to narrow the scope of those search terms.

7 12. On September 18, 2024, I met and conferred with Mr. Conrad and asked
8 him for a firm date by which Plaintiffs' vendor could provide an updated search term
9 report for Defendants' revised search terms.

10 13. On September 25, 2024, one week later, Plaintiffs provided a new search
11 term report for Defendants' revised search terms.

12 14. Between September 25, 2024, and October 23, 2024, I followed up
13 several times with Plaintiffs' counsel to confirm that Plaintiffs had begun reviewing
14 the results of the search term report and the expected date of Plaintiffs' production.

15 15. On October 23, 2024, after several follow-ups, Plaintiffs made their first
16 document production comprising over 5,740 pages of documents. Plaintiffs indicated
17 that the document production was not complete and that a second production would
18 be made in the near future.

19 16. To date, Plaintiffs have not made that second production.

20 17. On September 30, 2024, I requested Mr. Hadnagy's availability for a
21 deposition. I also told Mr. Conrad that a deposition could not take place until
22 Plaintiffs had produced their documents and Defendants had the opportunity to
23 review the documents.

24 18. On October 4, 2024, Mr. Conrad informed me that Mr. Hadnagy's
25 earliest availability for a deposition was the first week of December, one week before
26 the close of discovery.

1 19. Concerned that new topics for discovery may be learned during Mr.
2 Hadnagy's deposition, my colleague Jacob Dean raised the need for an extension of
3 the current case deadlines with Mr. Conrad. Mr. Conrad indicated that he would
4 speak to Plaintiffs regarding the extension.

5 20. On October 23, 2024, I raised with Mr. Conrad again the need for an
6 extension on current case deadlines and a continuance of a trial date because
7 Defendants have yet to receive the bulk of Plaintiffs' document production and would
8 need time to review those documents and engage in further meet and confers, if
9 needs, to resolve any deficiencies.

10 21. On October 28, 2024, Mr. Conrad told me that he did not have authority
11 to agree to a continuance.

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13 Dated: October 31, 2024

14
15 s/Matthew J. Mertens

16 Matthew J. Mertens